RECOLLECTIONS

OF THE

THE BENCH AND THE BAR

OF

CENTRAL ILLINOIS.

BY

HON. JAMES C. CONKLING,

SPRINGFIELD.

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A LECTURE

READ BEFORE THE CHICAGO BAR ASSOCIATION,
FAIRBANK HALL, WEDNESDAY EVENING, JANUARY 12, 1881.

BY

HON. JAMES C. CONKLING,

SPRINGFIELD.

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ON Wednesday Evening, January 12th, 1881, the second lecture before the Association was delivered by Hon. James C. Conkling, of Springfield, Illinois.

Quite a large number of ladies graced the occasion by their presence, and it was remarked that more than half of the judges of the Cook County Courts were in attendance.

In the absence of the President, R. Biddle Roberts, Esq., Vice-President, presided.

Mr. Roberts said: Ladies and gentlemen! The agreeable duty devolves upon me of introducing the distinguished and eloquent Lecturer of the evening.

Mr. Conkling has selected for his subject "The Early Bench and Bar of Central Illinois," and when we remember that he was contemporary with, and an active associate in practice during the palmy days, professionally and politically, of those great men who adorned the Bar of this State in passed years, we can realize, in some degree, the rich field from which he can draw for our information and entertainment.

Some few of those men survive; some, very distinguished in the annals of our country, have passed away. The testimony of one who was with them and of them can not fail to interest us all, more particularly the Bar Association.

Mr. Conkling has been a resident of Springfield and a distinguished member of the Bar of this State for nearly forty years, and in giving us, in this way, the benefit of his ripe experience he does us high honor.

Ladies and gentlemen, I have the honor to introduce to you the Hon. James C. Conkling.

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By Hon. JAMES C. CONKLING, Springfield.

Mr. President and Gentlemen of the Bar Association:

Biography is merely history in miniature. It may occupy only a brief space, but it is more or less connected with the great drama of human life. The personal reminiscences of some may be confined almost entirely to the vale of obscurity, while those of others may be so interwoven with national affairs, that it may be difficult to determine where biography ends and where history begins. Each possesses its peculiar characteristics.

History instructs, biography pleases. The one addresses itself to the intellect, the other to the affections. The one expands the mind, the other intensifies its energies. The one affords a grand and sublime exhibition of the powers of the human will, when driven by the fierce gales of passion and ambition, while the other gratifies the taste and appeals to the pleasurable emotions of a refined and cultivated mind. The one resembles old ocean lashed into fury by the tempest, terrific in its majesty, awful in its grandeur, relentless in its stern decrees, regardless of its victims and involving an universal catastrophe; while the other is like a peaceful river, meandering through pleasant vales, and amidst beautiful meadows, imparting freshness to the verdure and elegance to the scenery.

The personal reminiscences of the mere lawyer, however, have few charms to captivate the popular mind. It is true he may, to

some extent, control events; but like him, who moves the ever-shifting panorama of the stage, he keeps studiously out of sight. His pen may, possibly, be mightier than the sword; his whisperings may be more efficient than the thunders of artillery, his opinions may reach far beyond the din of battle, yet his life may possess none of the pomp and circumstance of glorious war, but may move quietly onward in almost unrecognizable obscurity.

How this is avoided! It is only when he throws aside the dusty tomes of the law, when he turns his back upon the worm-eaten volumes of his library, when he brushes away the legal cobwebs that have obscured his intellect, it is only when he comes out into the pure sunshine of heaven, when he steps upon the broad platform of active humanity, when he comes in contact with the conflicting interests of society, when he plays, with the fingers of a skilful master, upon the excited passions of political life, when he debates, with fierce enthusiasm, the questions of peace and war, when he hurls the quick retort, the fiery invective, the terrible denunciation, when he exposes error, denounces treason, glorifies patriotism, when he upholds the constitution, advocates the integrity of the union, aye, and even apostrophizes the old flag, as the symbol of our country's greatness and glory, it is then that the mere lawyer sinks into insignificance and he stands revealed as the grand and magnificent statesman.

Webster, and Clay, and Benton, and Calhoun, and hundreds of others, profound and eminent as lawyers, might have worn out their lives in haranguing courts and mystifying juries, and have gone down to their graves, "unwept, unhonored, and unsung," except by a few mourning relatives and friends, unless they had shivered their lances in senatorial contests, and gallantly struggled in the political arena with illustrious foes.

It is true, that some lawyers have acquired distinction as legal authors, and as such will be remembered through many generations. Their works may be dry and uninteresting to the general reader, they may abound in too many nice distinctions and subtle abstractions, they may be filled with technicalities and even

absurdities connected with black-letter lore, but yet they contain the broad massive foundations upon which is reared the legal superstructure of the present age. There are, however, some notable exceptions. Blackstone, by the elegance of his style, has thrown a charm over the pages of the law, and almost constructed a royal road for every student who aspires to obtain a knowledge of its principles, while Kent and Story, and a host of others in our own land, have shed a flood of light upon its elementary doctrines, which will reflect honor upon their names, and render them illustrious forever.

It is true, also, that the judicial ermine has graced the shoulders of many lawyers who have won an enviable fame as learned and honorable judges. Mansfield, and Elden, and Ellenborough, have become famous in the annals of English history as pioneers of English law, while Marshall, and Barbour, and Curtis, and Woodbury, and McLean, and Taney, and others, will always maintain a distinguished position in American courts as profound and learned jurists.

The mere lawyer, however, whose name is not inscribed upon the roll of fame as statesman, author, or judge, is liable to be soon forgotten in the lapse of time. He may have been too well contented with the dull routine of courts. He may have become too familiar with contingent remainders and executory devices. He may have striven too earnestly to master the doctrine of uses and trusts. Estates in entail and reversion may have afforded too extensive a subject for his study and reflection. Shelly's rule, like the *pons asinorum* of the mathematician, may have absorbed too much of his time and attention. Or perhaps the intricacies of special pleading may have captivated his mind, and the entire legal system, with all its absurdities and inconsistencies, may have been esteemed by him as the very perfection of reason.

He mourns, therefore, over the march of modern improvement, which tramples with a ruthless heel upon the antiquated remains of the past, and protests against the innovations which have swept away the dust of former ages, and let in the clear sunshine of a more enlightened period.

But though many such specimens may be found at the English bar, yet this is not generally the character of the American lawyer, particularly of the western type. Society here has been, and still is, in a formative condition. Forty years ago, the wants and necessities of the profession did not afford an opportunity for a minute investigation into the records of the past, or a profound study of legal principles. There were but few libraries of a respectable size, either public or private, in this State. In Springfield, there were not more than two or three that contained over fifty volumes. In Peoria, Quincy, and Belleville, the profession was not much better supplied. In Chicago, probably not more than half-a-dozen libraries contained over one hundred volumes. The Revised Statutes, the Illinois form-book, and a few elementary treatises constituted the usual outfit in the smaller towns. Fortunate was the attorney who could boast of a few English reports, or those of New York, Massachusetts, or Kentucky, which were then considered of standard authority. There were but few cases in the courts that required an extraordinary amount of learning to manage. There was no necessity for the application of the rule, *stare decisis*, for there were few or no decisions to stand upon. Good sound common sense, the gift of speech, a mixture of natural shrewdness with politics, and a regular attendance upon the courts in circuit, were the principal requisites for success.

Forty years ago, business was not so great in extent as to occupy the full time of the lawyer. Suits were not so numerous, or so important, as to afford a support for himself and his family. He engaged in political life as an employment, and solicited office to improve his slender income. A much larger number of the prominent members of the legal profession then became members of the State Legislature or of Congress than at present. The people demanded their political services, and they were happy and anxious to accommodate the people. A political contest gave them notoriety among the masses, and afforded them an opportunity to display their abilities. A reputation for eloquence and skill in debate was a recommendation as lawyers in the practice of their profession. Hence, we find the names of

Reynolds, Edwards, Cook, Casey, Breese, Browning, Hardin, Baker, Williams, Shields, Douglas, Trumbull, Lincoln, McClernand, and numerous others almost as frequently, in the political annals of our State, as upon the records of our courts. As lawyers they were eminent. As statesmen many of them became illustrious.

Forty years ago, the suits that were instituted were generally simple in their character. The terrible financial crash of 1837 had left the country in a state of bankruptcy. The vast system of internal improvements which had been projected in this State had been left unfinished. Contractors were unable to perform their obligations. Merchants found it impossible to collect their claims, and could not satisfy their own creditors. The masses of the peop'e were poor, and deeply involved in debt. The two-thirds law was invented for their protection, and the bankrupt law became a refuge for those who were hopelessly insolvent. A very large proportion of suits was for the collection of debts, and to set aside fraudulent conveyances. Actions of slander, and trespass for assault and battery, engendered by the state of feeling incident to pecuniary embarrassment, were frequent. The records of our courts, and the earlier volumes of our reports, were not burdened with many cases of a very serious or complicated character.

The history of the law, as included in these reports, affords a striking illustration of the remarkable growth of our State in population and wealth. The rapid publication of the former has been commensurate with the enormous development of the latter. The sums involved in the earlier actions were small and trifling when compared with those of recent years, which have frequently been colossal in size, amounting to millions of dollars, while the questions to be decided have been of the most difficult and intricate character. Almost an entirely new system of law has been developed, which has required the exercise of sound judgment, clear preception, profound study, and extensive research by our legal tribunals.

The rapid increase of municipal corporations has required the establishment of discriminating rules, by which to regulate their

complicated interests and determine their relative rights and duties. Questions concerning the validity of bonds, involving many millions of dollars, had to be decided in such a manner as to protect the people against the imprudence or the villany of their public agents upon the one hand, and maintain the rights of innocent purchasers upon the other.

The vast increase of life and fire insurance institutions has occasioned investigations of the most complicated kind, while our commercial transactions have multiplied to an almost infinite extent, affecting every department of industry and enterprise, and continually presenting novel questions for settlement by the courts.

The enormous expansion of our railroad system has also demanded the utmost prudence in determining how far the right of condemnation, founded upon the doctrine of eminent domain, should be exercised, and how far the power of the legislature extends in establishing a system of rates and freights, and when it may become necessary and proper to curb the fearful demands and exactions of these overgrown monopolies upon the rights and interests of the masses. It is yet to be determined, either by legislative or judicial authority, how far the present absolute, illimitable *imperium* shall be tolerated in a republican *imperio*, and how long railroad monarchs, with hundreds of millions at their command, shall defy the government made by the people and for the people.

But little assistance could be obtained from the old English reports in regard to the novel and complicated questions that have arisen within the last forty years. The genius of our institutions required our courts to break the shackles and fetters of the old feudal system, and to apply the principles dictated by sound common sense, an enlightened judgment, and a progressive age to the altered and peculiar circumstances in which they were placed. Our judges have found abundant material in the decisions of the courts of our sister States to sustain their opinions, illustrate their arguments, and enforce their decrees, without resorting to English authority; while English judges have drawn inspiration from American foun-

tains of equity and law, and have generously complimented our courts upon the extent of their learning, the diligence of their researches, and the correctness of their decisions.

As long ago as 1821, Judge Story remarked that the mass of American law was accumulating, even then, with almost incredible rapidity, and that it was impossible not to look without some discouragement upon the ponderous volumes which the next half-century would add to the groaning shelves of our jurists. The half-century has already passed away. If Judge Story were now living he would not only look with discouragement, but with absolute amazement upon the perfect avalanche of legal works which issue yearly from the press. It would now require a princely income to embrace them all in a single library, but taken *en masse*, the American reports constitute a monument of enlightened wisdom, erudite scholarship, and profound learning which the world never before has witnessed, and which will command the utmost veneration and respect in the courts of future ages.

Lawyers, however, with that commendable pride by which the profession is characterized, have taken great pains to enlarge their libraries by selecting the best reports and the most exhaustive elementary treatises that can be obtained. In Chicago, especially, many of them, before the great fire, possessed invaluable collections of legal works that would do honor to any city. They were not satisfied by law as modified by our peculiar institutions and the progressive ideas of this enlightened century, but rare works in black-letter print, antiquated binding, and Latin jargon graced their shelves.

The vast commercial interests of this City; the rapid development of real-estate values; the enormous expansion of the railroad system; the unexampled increase of an industrious, energetic population; the municipal regulations, intended for the determination of the rights of *meum* and *tuum*—all demanded whatever assistance could be obtained from the profound learning of former ages, as well as the enlightened wisdom of the present. But the fire of 1871 swept away these accumulated treasures, as well as the wealth and palaces of her merchant

princes. While these latter, with an indomitable energy unsurpassed in the history of any age, were laying the foundations of new and more splendid edifices amid the smoking ruins of the old, it is also true that her lawyers were active and vigilant in ransacking the libraries of the world in order to replace the losses incurred by that terrible calamity. As the stranger looks with amazement at the marble palaces, adorned with colonnades and statuary and all the ornamentation of an improved architectural taste, which have arisen, phœnix-like, from the ashes of the past, he may also regard with astonishment the splendid libraries, public and private, which adorn the City, and prove that lawyers are not drones in society, and that energy and enterprise are not confined to the mercantile and manufacturing classes of the community.

Forty years ago, many of the lawyers who had assisted in the formation of the original Constitution of our State, and who had helped to mould the character of our institutions, had passed away.

Among them were Gov. Edwards, who is generally recognized as a gentleman of the old school, courtly in his manners, with knee-breeches, ruffled-shirt, and fair top-boots; but a lawyer and politician of distinguished ability. Elias K. Kane, who was United States senator, and to whom principally we were indebted for many of the peculiar features of our first Constitution. Daniel P. Cook, who was our first Attorney-General, and afterward member of Congress, and who is represented as "a man of eminent talent and accomplishments." George Forquer, who was also Attorney-General and a member of the Legislature of 1832, and chairman of the committee on internal improvements at the session of 1834. Also Benjamin Mills, who was one of the most brilliant orators of his time, and who was engaged in prosecuting the impeachment of Judge Smith, and who spoke for three days during that proceeding in a strain of unsurpassed eloquence.

But John Reynolds, Sidney Breese, Zadoc Casey, Henry Eddy, Samuel D. Lockwood, Nathaniel Pope, William J. Gatewood, and others, still survived, and were engaged more or less actively in

the duties of their profession, in judicial positions, or in the more exciting affairs of political life.

About that time younger members of the bar began to appear upon the public stage in Central Illinois, many of whom have since acquired great eminence in their profession, and high distinction in the political history of the State and Nation. Among them are Stephen A. Douglas, Abraham Lincoln, John J. Hardin, James Shields, John A. McClernand, O. H. Browning, Archibald Williams, John T. Stuart, Lyman Trumbull, E. D. Baker, and Stephen T. Logan, whose names may be frequently seen in the earlier reports of the Supreme Court and some of whom still survive.

Our first Constitution was framed in the summer of 1818. It established a Supreme Court of four judges, who were also required to hold Circuit Courts, and who, with the governor, constituted a Council of Revision. They were elected by the General Assembly. Joseph Phillips was the first Chief-Justice, and Thomas C. Browne, William P. Foster, and John Reynolds were Associate-Justices.

Phillips was represented as a lawyer of fine intellectual endowments. He resigned his seat upon the bench in 1822, and became a candidate for governor against Edward Coles, but was defeated. Thomas Reynolds was appointed in his place.

Judge Foster is described, historically, as no lawyer and a great rascal. It is said that he never read or practised law, but obtained his appointment by his winning and polished manners. He was assigned to the Wabash district, but resigned his position before he entered upon the duties of his office, and William Wilson was appointed his successor in August, 1819.

Judge John Reynolds says that the material for the bench was not at that time as good as it might have been; but the State government was launched into existence, in the hands of common-sense men, and sound and honest patriots; that the judges were all young and had not that long practice at the bar that was necessary to give standing and character to their decisions; but the law was administered with less form and ceremony, yet with as much equity and justice as at the present time.

As an evidence of the want of form and ceremony, he relates that he held his first court, in the spring of 1819, in Washington County, among his old friends and comrades. The sheriff was an old ranger like himself. Sitting astride a bench at the court-house, at the commencement of the term, he proclaimed, without rising: "The court is now open! John is on the bench."

Not long after, in Union County, where he presided, the deputy-sheriff exclaimed: "Oh yes! oh yes! oh yes! the honorable judge is now opened."

In January, 1825, the Legislature elected Wm. Wilson, Chief-Justice, and Thomas C. Browne, Samuel D. Lockwood, and Theophilus W. Smith, Associate-Justices, and required them to hold the Supreme Court twice a year, at the seat of Government. It created five judges, John Y. Sawyer, Samuel McRoberts, Richard M. Young, James Hall, and John O. Wattles, who were to perform Circuit-Court duties at the munificent salary of $600 per annum. But the people were so dissatisfied with the extravagant expenditure of the public money that the next Legislature repealed the law, divided the State into five circuits, retained R. M. Young as judge of the Circuit Court in the military district, and required the Supreme judges to hold Circuit Court.

Judge Wilson, at the time of his elevation to the honorable position of Chief-Justice, was only twenty-nine years of age. He had already been upon the Supreme bench five years as Associate-Justice. He was born in Virginia in 1795, and came to Illinois in 1817. Within a year after his arrival, he was chosen to the place of Judge Foster. He was remarkably correct in all his transactions, and secured the confidence and esteem of the people by his gentlemanly deportment and the urbanity of his manners. He remained upon the bench until the Constitution of 1848 went into effect, when he retired to private life. As a writer, his style was clear and distinct. As a lawyer, his judgment was sound and discriminating. As a judge, his learning and impartiality commanded respect, and his public opinions are characterized by sound reasoning and good sense.

Judge Browne also remained upon the bench until the new Constitution was adopted, although a strenuous effort had been

made to remove him by impeachment at the session of the Legislature of 1842–3.

He had been a member of the Supreme Court since the adoption of the Constitution of 1818. He was kind and gentlemanly in his deportment, and friendly to all, but possessed no legal attainments, and was utterly unfit for the high and responsible position which he occupied. The few decisions which he rendered were upon the points of practice, or upon questions of the simplest character. The estimation in which he was held by his brother judges may be inferred from the following incident: On one occasion, when a case had been referred to him for decision, he requested time for deliberation. "O pshaw, judge," said one of the court, "you may as well guess now as at any other time."

The attempt to impeach him was on the ground of incompetency. His home had been at Shawneetown, but upon the reorganization of the Supreme Court, he had been assigned to the Galena district, with the hope that this stroke of unfriendly legislation would be unsatisfactory and induce him to resign. But as he was willing to accept the position with all its inconveniences, a determined effort was made to remove him, and specifications were filed before the Senate by Thos. Drummond, S. C. Hempstead, Thompson Campbell, and A. L. Holmes, charging that he did not possess that natural strength of mind, nor the legal and literary learning, indispensable to the proper discharge of the high and responsible duties devolving upon him as a judge of the Supreme Court; that his opinions in that court were written and revised by others; that his decisions upon the Circuit were the mere echoes of the ideas of some favorite attorney; and that by nature, education, and habit, he was wholly unfit for his position. The Senate, however, declined to examine into the charges. The House, in committee of the whole, went several times into their investigation, but finally asked to be discharged from their further consideration.

Judge Browne therefore retained his position, and remained upon the bench until the Supreme Court was reorganized under the new Constitution.

Judge Lockwood had been Attorney-General in 1822. About that time an attempt was made by many prominent politicians to convert Illinois into a slave-state. The Legislature of 1822 passed a resolution, recommending the electors to vote at the next election for or against a Convention, the avowed purpose of which was to amend the Constitution, so that slaves could be introduced into the State. The late Chief-Justice Joseph Phillips, the newly-elected Chief-Justice Thomas Reynolds, Judge Theophilus W. Smith, Judge Samuel McRoberts, and R. M. Young, afterward judge of the Supreme Court, were all in favor of the amendment. But Judge Lockwood, and other able writers and orators, were zealously opposed to it. A bitter canvass raged for nearly eighteen months, in which the question of introducing slavery was discussed in the midst of great excitement. The Convention scheme, however, was finally defeated by a majority of about eighteen hundred, and Illinois remained a free-state.

Judge Lockwood was elected Justice of the Supreme Court by the Legislature, in January, 1825, and remained upon the bench until the adoption of the Constitution of 1848. He was remarkably modest in his character, but a man of great intelligence, energy, and determination. He was inflexibly honest and upright, a sound lawyer, an impartial judge, and an ornament to the bench.

Judge Smith was also elected as Associate-Justice of the Supreme Court by the Legislature, in January, 1825. Judge Ford says: "He was a sagacious, active, and blustering politician. He had for a long time aimed to be elected to the United States Senate. His devices and intrigues, to this end, had been innumerable. In fact, he never lacked a plot to advance himself or to blow up some other person. He was a laborious and ingenious schemer in politics, but his plans were always too complex and ramified for his power to execute them. Being always unsuccessful himself, he was delighted with the mishaps alike of friends and enemies; and was ever chuckling over the defeat or the blasted hopes of some one. But he made nothing by all his intrigues. By opposing the Reform Bill, he fell out and quarreled with the leaders of his party. He lost

the credit he had gained by being the Democratic champion on the bench. He failed to be elected to the United States Senate, and was put back to the laborious duty of holding Circuit Court."

At the session of the General Assembly of 1832, he was impeached and tried before the Senate. The House reported four different specifications for malpractice and corruption in office. The managers on the part of the House were Benjamin Mills, John T. Stuart, James Semple, Murray McConnell, and John Dougherty. The defendant's counsel were Sidney Breese, Thos. Ford, and Richard M. Young.

The trial attracted great attention, not only at the seat of government, but throughout the State. It occupied about one month. The vote in the Senate was about equally divided; but, as the Constitution required a majority of two-thirds to convict, the judge was acquitted. He retained his seat upon the bench until December, 1842, when he resigned.

Notwithstanding his reputation as an unscrupulous politician, Judge Smith was recognized as a man of strong mind and considerable mental vigor, and as a good lawyer.

In 1835, the Legislature again created Circuit Judges, and continued to add to their number until there were nine circuits. But by the act of 1841, it legislated the nine judges out of office, increased the number of the Supreme judges from four to nine, and elected Thos. Ford, Sidney Breese, Walter B. Scates, Samuel H. Treat, and Stephen A. Douglas, all Democrats, in addition to the four judges then upon the bench. The change was a bitter partisan measure, and, in the language of Governor Ford, "one confessedly violent and revolutionary, and could never have succeeded except in times of great party excitement. The contest in the Presidential election of 1840 was of such a turbulent and fiery character, and the dominant party in this State had been so badly defeated in the Nation at large, by the election of General Harrison, that they were more than ever inclined to act from motives of resentment and a feeling of mortification. The dominant party, therefore, came to the work, thirsting for revenge, as well as with a determination to leave nothing undone to secure their power in this State at least."

Two important suits were connected with this change in the judiciary system. An attempt was made to remove Alexander P. Field from the office of Secretary of State. He and three of the Supreme judges belonged to the Whig party. When Governor Carlin came into office in 1838, he claimed the right to appoint a new secretary before any vacancy existed. He nominated John A. McClernand; but the Senate, by a vote of twenty-two to eighteen, declared that the executive did not possess the power to nominate a secretary, except in case of vacancy, and they therefore rejected the nomination. After the adjournment of the Legislature he undertook to appoint McClernand as secretary, who thereupon demanded possession of the office, but was refused. McClernand then filed an information, in the nature of a *quo warranto*, before Judge Breese, in the Circuit Court of Fayette County, who decided in his favor. Field took an appeal to the Supreme Court, where the decision was reversed. Aside from the political questions involved, the case was of considerable importance. Able counsel appeared on each side. For the appellant were Cyrus Walker, Justin Butterfield, and Levi Davis. For the appellee, Stephen A. Douglas, Jas. Shields, and Wickliffe Kitchell, the Attorney-General. Wilson and Lockwood, the Whig judges, concurred, and Smith dissented. Browne being connected with the relator, declined to sit in the cause. The Court decided that the Governor did not possess the power of removing the Secretary of State at his pleasure; that when that officer was once appointed, he continued in office during good behavior, or until the Legislature limited the term or authorized some public functionary to remove him. The decision caused great excitement in political circles against the "Whig Court," because it prevented the Democrats from occupying one of the principal offices of the government; and it had a considerable influence in causing a reorganization of that tribunal.

But there was another suit which was considered of far greater political importance, and which threatened the Democratic party with the danger of losing their political control of the State, and consequently all their power and patronage. This was the

celebrated Galena alien case. The Constitution of 1818 provided that in all elections, all white male inhabitants, above the age of twenty-one years, having resided in the State six months next preceding the election, should enjoy the right of an elector. Nine-tenths of the foreign vote were Democratic, and as the aliens numbered about ten thousand, if they were excluded from the polls, the approaching Presidential election would be determined in favor of the Whigs.

In order to test the right of aliens to vote, without having been naturalized, an agreed case was instituted in the Circuit Court at Galena, between two Whigs, to recover the penalty of $100 under the law of 1829, because the defendant, who had acted as judge of the election, had received the vote of an alien. Judge Dan Stone, before whom the case was tried, decided that an alien was not entitled to exercise the electoral franchise, and therefore imposed the penalty prescribed by the statute. The case was immediately taken to the Supreme Court, and ably argued upon its merits at the December term, 1839, but was continued to the next June term, during the heat of the Presidential canvass. There was a general apprehension that the case would be decided by the Whig Court against the right of aliens to vote, whereby the State would be carried by the Whig party. But Judge Smith came to the rescue of his friends, and pointed out to the counsel a clerical defect in the record, which caused a continuance of the case to the December term, beyond the date of the Presidential election. When it came up for final decision, the constitutional question was avoided, and the Court very properly decided that as the alien, whose vote was in question, was, by admission of both parties, possessed of all the qualifications required by the law of 1829, the Court erred in imposing the penalty.

Meanwhile, the bill to reorganize the Supreme Court was pending before the Legislature. It was boldly charged by Douglas in a speech before the lobby, which in those days had considerable political influence, that the main question had been purposely evaded by the Court, so as to conciliate Democratic favor and defeat the bill. Its introduction had created a great

deal of feeling and excitement among all parties. It was not only opposed by the members of the Supreme Court, but also by the nine Circuit judges, a majority of whom were Democrats. It finally passed, however, but was returned by the council of revision with their objections. They regarded it as physically impossible for nine judges to hold Circuit Courts in all the counties of the State, and discharge their duties as a Supreme Court, and also attend at the seat of government as a council of revision. The nine Circuit judges had found it impossible to attend to all the business, in consequence of the vast increase in the number of suits. To impose this burden upon the Supreme judges, in addition to their other duties, they contended would result in great delay, if not in an absolute denial of justice. The bill, however, was repassed in the Senate, notwithstanding the objections, by a large majority; but in the House of Representatives by only a majority of one.

A protest was signed by thirty-five members of the House and spread upon the journals. Among the names we find those of the following lawyers, who have become distinguished in the annals of the State and the Nation: Cyrus Edwards, a brother of Gov. Ninian Edwards. He was a candidate for governor of this State in 1838, in opposition to Gov. Carlin, who was elected, and who, in the felicitous language of John Reynolds, made a wise and prudent governor, and "retired to private life with the decided approbation of the people." Also John J. Hardin, who was popular in his manners, and bold and impetuous in his character. He enlisted in the Mexican war, was elected colonel of the 1st regiment of Illinois volunteers, and fell, gallantly fighting, at the battle of Buena Vista. Also D. M. Woodson, who has since been elected as Circuit judge, and occupied the bench a number of years. Also E. B. Webb, a man of great decision of character, eminent as a lawyer, and influential as a politician. Abraham Lincoln was also among the members who protested against the passage of the bill. And also Jos. Gillespie, who was judge of the Circuit Court of the Madison judicial circuit for some years, who has always taken a deep interest in political affairs, and who is the only surviving lawyer who signed

the protest. The five additional judges above named, were elected under the provisions of this act. As thus constituted, the Supreme Court continued to exist until it was dissolved by the Constitution of 1848.

It is not the only instance in the history of our country, where courts have been reorganized for the express purpose of securing some political advantage. As the courts of the United States and the Supreme Court of the State were held at Springfield about 1840, many of the prominent lawyers from various portions of the State were regular in their attendance. Among them were O. H. Browning, Archibald Williams, Thomas Drummond, Justin Butterfield, Cyrus Walker, J. Y. Scammon, John D. Caton, I. N. Arnold, Charles Ballance, William Thomas, Lyman Trumbull, Walter B. Scates, Joseph Gillespie, Gustavus Koerner, E. B. Washburne, and others, whose names are frequently seen in our earlier reports, and who acquired a wide reputation as sound and able lawyers.

Were it our privilege to discuss the merits of the living, as well as the virtues of the dead, it would be a pleasure to dwell upon reminiscences connected with their history. We could point to the munificent liberality of one; to the fine literary taste and varied accomplishments of another; to the extraordinary forensic eloquence of several; to the judicial honors worthily bestowed upon many, as well as to the profound learning and extensive legal attainments of all. But we forbear. Time is rapidly hurrying them onward, while the angel of history is patiently waiting to inscribe their honored names upon the roll of fame.

The State having been divided, in 1841, into nine judicial circuits, the territory embraced by each was of considerable extent. The Sangamon district included Woodford County on the north and Shelby County on the South, and extended as far east as Coles. The sessions of court were held twice in the year. As legal business at home during the long vacations was very inconsiderable, the lawyers were compelled to travel upon the circuit. In the spring, they generally went on horseback, on account of muddy roads and swollen streams. Bridges, in the unsettled portions of the counties, were scarce, and the sloughs

were frequently difficult to cross. The grass was so thickly matted together, and its roots so densely entwined, that the rains passed off very slowly. The roads generally ran through the middle of the prairies, and often there were stretches of twelve or fifteen miles without a house or any sign of improvement. I have traveled sometimes nearly all day without meeting a human being or passing a single farm. Almost everybody considered it his duty to exercise the rights of hospitality, and the latch-string generally hung out. On one occasion I rode from breakfast time until after dark, through prairies covered with water, after heavy rains. At length I stopped at a cabin and knocked for admittance, but receiving no answer, I opened the door, and saw, by the bright moonlight, chairs and beds arranged in perfect order, but no inmates. Being very hungry I searched for something to eat, and fortunately found some meat and corn-bread in nicely covered dishes. Of course I levied upon the provisions for supper; and took possession of one of the beds, where I slept comfortably and undisturbed until morning, when I went on my way rejoicing.

On another occasion, in 1838, I stopped at a cabin in Logan County, near the site where the magnificent institution for the feeble-minded, has recently been erected by the State. The woman complained very much because the population was becoming too dense. She said her family would be compelled to remove further west, where they would not be troubled by so many neighbors. In the morning, I discovered one house in sight, and no more, and in the direction of Springfield it was about eight miles to the nearest farm.

In the spring, to my young and ardent mind, the prairies were surpassingly beautiful. Covered with luxuriant grass, interspersed with flowers of every hue, which gracefully bent with every passing breeze, they possessed a charm that can never be forgotten.

> These are the gardens of the desert, these
> The unshorn fields, boundless and beautiful,
> And fresh as the young earth, ere man had sinned—
> The prairies—I behold them for the first,
> And my heart swells, while the dilated sight
> Takes in the encircling vastness. Lo! they stretch

In airy undulations far away,
As if the ocean in his gentlest swell
Stood still, with all his rounded billows fixed
And motionless forever.

The hotel accommodations at that early day were of the humblest kind. Sometimes we were fortunate enough to sleep on a bedstead, but frequently upon the floor. The rooms were generally crowded with jurors, witnesses, parties litigant, and others, who had come not merely to attend court, but to witness a horse-race, or a circus, or some theatrical performance, which were generally the side-shows of a Circuit Court in those primitive times. At the first session of the court held at Taylorville, in Christian County, the county-seat consisted of two houses, each containing one room. One was occupied by the court and the other as a saloon. The business was dispatched the first afternoon, and the judge and the bar rode ten miles in a drizzling rain to find shelter for the night.

When not engaged in business, lawyers spent their leisure hours in social conversation, singing songs, telling stories, and playing cards or practical jokes upon each other. Hon. William L. May, who had been a member of Congress, having some musical taste, carried his violin with him. Mr. Lincoln abounded in anecdotes, of which he seemed to possess an inexhaustible fund. No one could relate a story without reminding him of one of a similar character, and he generally capped the climax. His stories, though rude, were full of wit. He relished whatever had a nib to it, as he expressed it. He generally laughed as loudly as others at his own witticisms, and provoked laughter as much by the quizzical expression of his homely features, and the heartiness of his own enjoyment, as by the drollery of his anecdotes.

Mr. Lincoln was a slow thinker. It seemed as if every proposition submitted to his mind was subjected to the regular process of a syllogism, with its major proposition and its minor proposition and its conclusion. Whatever could not stand the test of sound reasoning he rejected. Though honest by instinctive impulse, he became still more so by the logical operation of his mind. He would not accept a fee in a bad cause. He would

not argue a case before a jury for the sake of argument, when he believed he was wrong. No man was stronger than he when on the right side, and no man weaker when on the opposite. A knowledge of this fact gave him additional strength before the court or a jury, when he chose to insist that he was right. He indulged in no rhetorical flourishes or mere sentimental ideas, but could illustrate a point by one of his inimitable stories, so as to carry conviction to the most common intellect. He used plain Saxon words, which imparted strength to his style, at the expense, it may be, of elegance, but which were understood and appreciated by the masses of the people. Dr. Leonard Bacon, of New Haven, whose learning and scholarship are well known, once told me that he considered the Cooper institute speech of Mr. Lincoln one of the purest specimens of composition in Saxon words to be found in the English language.

Mr. Lincoln's power of overwhelming an adversary by anecdote, or an illustration, was demonstrated on one occasion, when he was a member of the Legislature. A gentleman who had formerly been Attorney-General of the State was also a member. Presuming upon his age, experience, and former official position, he thought it was incumbent upon him to oppose Mr. Lincoln, who was then one of the acknowledged leaders of his party. He therefore took especial pains to reply to Mr. Lincoln's speeches, and was so persistent in his assaults that he became positively annoying and offensive. He at length attracted the attention of Mr. Lincoln, who replied to his remarks, and then told one of his humorous anecdotes, and made a personal application to his opponent, which placed him in such a ridiculous attitude, and which was so apropos, that it convulsed the whole house of representatives with laughter. All business was at once suspended. In vain the Speaker rapped with his gavel. In vain the door-keepers endeavored to preserve order. Members of all parties, without distinction, were involuntarily compelled to laugh. They not only laughed, but they screamed and yelled. They pounded upon their desks. They thumped upon the floor with their canes. They clapped their hands. They threw up their hats. They shouted and twisted themselves into all sorts

of contortions, until their sides ached and the tears coursed down their cheeks. The lobby was as badly infected as the House. It was a scene of indiscribable confusion. One paroxysm passed away, but it was speedily succeeded by another, and again they laughed, and screamed, and yelled. Another lull occurred, and still another paroxysm, until they seemed to be perfectly exhausted. It is needless to add that the ambition of Mr. Lincoln's opponent was abundantly gratified, and that for the remainder of the session he relapsed into a condition of profound obscurity.

One of Mr. Lincoln's most intimate friends, and a partner in the practice of law for some years, and one of the most successful lawyers of this State, was Stephen T. Logan, of Sangamon County. He came from Kentucky when thirty-two years of age, bringing with him a high reputation, and soon obtained a leading position at the Springfield bar, which was then and afterward, during his career, adorned by such distinguished lawyers as Baker, Stuart, Lincoln, Douglas, McDougal, Edwards, Hay, Palmer, McClernand, and others. In 1835 he was elected Circuit judge by the Legislature, and after serving in that capacity about two years, he resigned because of the inadequacy of the salary. He was elected several times to the Legislature, and always took a prominent part in debate. His opinions were received with deference, and he exercised an extraordinary influence by the integrity of his character and his fairness in discussions.

He was a member of the Constitutional Convention of 1848, and by his characteristic wisdom, prudence, and economy materially assisted in the adoption of some of the best provisions of that Constitution.

In 1848 he was nominated as the Whig candidate for Congress in his district, in opposition to Col. Thomas L. Harris, who had just returned from a brilliant career in Mexico, with his brow adorned with military laurels. Lincoln, Baker, and Logan then constituted a triumvirate, and were the three political leaders in their congressional district. Each was ambitious to serve his country at Washington City. It was understood that they would

be candidates in rotation. Baker had been elected, and was occupying his seat when the war with Mexico commenced. Lincoln succeeded him according to agreement. Logan, in his turn, became a candidate, but, being utterly destitute of those qualities which win the popular heart, and being opposed by a gallant soldier, who had achieved success upon the battle-field, he was signally defeated. He was too honest in the declaration of his principles to succeed in political life, and would never condescend to the arts and chicanery by which demagogues are accustomed to clamber into office.

He was appointed, by Governor Yates, one of the seven commissioners to represent the State in the celebrated Peace Convention, which met at Washington prior to Mr. Lincoln's inauguration. His efforts there were conservative in their character, and he pleaded powerfully for the preservation of peace. In one of his speeches he remarked:

"Instead of *dreaming* of news from the seat of war, and of marching armies, I have thought of a country through which armies have marched, leaving in their track the desolation of a desert; I have thought of harvests trampled down; of towns and villages, once the seat of happiness and prosperity, reduced to heaps of smoking ruins; of battle-fields red with blood, which has been shed by those who ought to have been brothers; of families broken up, or reduced to poverty; of widowed wives, of orphaned children, and all the other misfortunes which are inseparably connected with war. This is the picture which presents itself to my mind every day and every hour. It is a picture which we are doomed soon to witness in our country, unless we place a restraint upon our passions, forget our selfish interests, and do something to save our country."

In his professional career he stood preëminent. He possessed the rare faculty of perceiving almost intuitively the strong points of a case, and the remarkable power of making clear and distinct to a court or a jury, the perceptions which he himself entertained. Distinctions, which to others would possess no difference, were recognized by the extraordinary keenness of his intellect and magnified by the lucid character of his argument,

until courts and juries were convinced of the correctness of his views. He won many a triumph by the fairness of his statements and the logical precision of his speeches. He disdained the arts of sophistry and appealed generally to the understanding of his hearers, though there were occasions when he would indulge in the flowers of rhetoric and attempt to move a jury by an earnest and impassioned eloquence. He was universally recognized by the bench and the bar as the great *nisi prius* lawyer of the State, and clients, who were fortunate enough to secure his services considered it as a sure presage of victory.

He was small in stature and frail in constitution, but a piercing deep-set eye and a large cranial development, imparted a highly intellectual appearance to his almost infantile features. He died at the age of eighty, although I have heard him say, nearly forty years ago, that he did not expect to live beyond sixty years of age. He will long be remembered for his public services as a legislator, for his ability as a judge, and for his eminent success as a lawyer.

Allusion has already been made to Col. E. D. Baker. He was an ornament to the bar. Although somewhat abrupt in his manners, he was pleasing in his address; but the charms of his eloquence overbalanced every other consideration, and courts and crowds were alike captivated by his oratory. Possessed with a powerfully retentive memory, the acquisition of knowledge was an easy matter. He reveled amidst the fields of literature, as well as of law, and culled many a flower of rhetoric, which he scattered again with rich profusion. Before the Mexican war he delivered three lectures without notes upon the arts of Greece and Rome, before large and fashionable audiences, showing great research and remarkable tenacity of memory. He was a member of the last legislature that was held at Vandalia, and, as an evidence of his versatility of his tastes and habits, it is said that at one moment he would be playing at marbles with the boys, and the next he would be addressing the House of Representatives in strains of lofty eloquence. He was intensely ambitious. Arnold says a friend found him sitting on a fallen tree weeping bitterly. On being pressed to tell the cause of his

grief, he said: "I have been reading the Constitution of the United States, and I find a provision in it that none but native-born citizens can be President. I am an Englishman by birth, and therefore can not be elected." I have only to say that Baker himself always denied this charge. He said he was not sitting upon a fallen tree on that occasion, but upon an old stump. Not only the refined and the intellectual listened with pleasure to the easy flow and the musical cadance of his language; not only did courts and juries wonder at the extent of his legal knowledge considering the carelessness of his habits; not only were representatives and senators carried away by his eloquent strains, but the masses of the people recognized his ability and received him with apturous applause whenever he was pleased to address them. He was greedy of popular favor. I remember his electioneering-coat It was rather small for his well-made and graceful figure. The flaps were widely separated from each other. The inexpensive garment hung awry upon him, and looked like an old dilapidated flag at half-mast. But he performed wonderful feats in his affected dress, and swayed the multitude at his pleasure by the magic power of his eloquence. He was bold as a lion. In those early days, when politics ran high, he was sometimes surrounded by danger, but no threats could intimidate him; no peril could make him quail. He became representative in the Legislature of 1837, and Senator in 1840. He was elected to Congress in 1844, and at the commencement of the Mexican war he left his seat, raised the 4th Illinois regiment, and united with the army. When the gallant Shields fell wounded at the battle of Cerro Gordo, Baker instantly took command of the brigade, charged magnificently upon the enemies' guns, and helped to complete the utter route of the Mexican army.

In 1852 he went to California. There he became popular, notwithstanding his politics. The enthusiastic impulses of his genius corresponded with the fiery energies of the population. He applied himself assiduously to the practice of his profession and took a conspicuous position in the first rank of the members of the bar. At the funeral of Broderick he delivered one of the most magnificent orations that ever adorned the English lan-

guage. For an hour or more the homage of tears was paid to Baker's genius and Broderick's memory by the vast multitude which had assembled to pay the tribute of their love and affection. The closing words of this wonderful eulogy are remarkable for their touching pathos.

Said he: "The last word must be spoken, and the imperious mandate of death must be fulfilled. Thus, O brave heart! we lay thee to thy rest. Thus, surrounded by ten of thousands, we leave thee to the equal grave. As in life no other voice among us so rang its trumpet-blast upon the ear of freeman, so in death its echoes will reverberate amidst our mountains and our valleys until truth and valor cease to appeal to the human heart. Good friend! true hero! hail and farewell!"

After the death of Broderick, Baker went to Oregon and entered with great zeal into the canvass of 1859, and was elected by the Legislature, Senator in Congress from that State. He had now arrived at the summit of his political ambition. By the urbanity of his manners; by the elegance of his style; by his readiness in debate, he took a leading position in the deliberations of the Senate, and exerted all his energies, and all the powers of his eloquence, in the support of Lincoln's administration. But the ardent impulses of his nature, and his thirst for military glory led him instinctively toward the battle-field. The last time I saw him was at the eastern portico of the capitol at Washington. Solitary and alone, he was leaning against one of the pillars absorbed in deep reflection. What were his thoughts and what the promptings of his fierce ambition were only known to him and his Maker. A few minutes after he was mounted upon his charger, at the head of his California regiment, marching through Pennsylvania Avenue, amidst all the pomp and circumstance of war, and amidst the thousands that had assembled to witness the grand but mournful display. His military career was brief and sad. In October, 1861, he fell at Ball's Bluff helplessly contending against a concealed and superior foe, a willing sacrifice upon the altar of his adopted country. In his own language we may well exclaim: "Good friend! true hero! hail and farewell!"

But time would fail me on this occasion to refer in detail to

many others who are entitled to honorable mention as members of the early bench and bar of Central Illinois.

We can occupy your attention only for a moment with reference to Stephen A. Douglas, who was also a member of the Springfield bar, and who won the soubriquet of the "little giant" forty years ago. The language of eulogy has been exhausted by his admiring friends. No man ever had more enthusiastic adherents. As a young man he was extremely affable in his manners, and endeavored to make himself agreeable, in his private intercourse, to men of all parties. Ambitious of distinction, he assiduously endeavored to ingratiate himself with the masses of the people, and by his deferential manners, as well as by his extraordinary talent, he succeeded in winning the popular favor. He took advantage of every opportunity to advance his political prospects. He became the idol of his party, and was rapidly elevated from one political position to another, until he became a distinguished member of the United States Senate, and a prominent candidate for Presidential honors. The great debate between him and Lincoln will long be remembered, and history will record this grand intellectual contest as one of the most extraordinary that was ever witnessed in any age or any country.

Lincoln and Douglas were the honored chiefs of their respective parties, and are the grandest characters, intellectually and politically, which have graced the annals of our State. In many respects they were preëminent among our most distinguished lawyers and statesmen. As their destinies were associated in their early manhood, and intertwined with each other in their maturer years, so their memories, indissolubly united, will be embalmed together in the pages of history with those of the most remarkable men of our nation.

The remains of one repose upon the shores of your lake, whose dashing waves will forever sound his praises and sing a requiem for his departed spirit; while those of the other slumber beneath a magnificent monument, whose lofty column will for many ages awaken the recollection of his numerous virtues and his illustrious career.

Illinois has reason to be proud of her statesmen, her judges, and her lawyers.